

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHNNY RUFFIN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION 07-0848-M
	:	
MICHAEL J. ASTRUE,	:	
Commissioner of	:	
Social Security,	:	
	:	
Defendant.	:	

MEMORANDUM OPINION AND ORDER

In this action under 42 U.S.C. § 1383(c)(3), Plaintiff seeks judicial review of an adverse social security ruling which terminated Supplemental Security Income benefits (hereinafter SSI) (Docs. 1, 13-14). The parties filed written consent and this action has been referred to the undersigned Magistrate Judge to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73 (see Doc. 18). Oral argument was heard on June 23, 2008. Upon consideration of the administrative record, the memoranda of the parties, and oral argument, it is **ORDERED** that the decision of the Commissioner be **REVERSED** and that this action be **REMANDED** for further proceedings not inconsistent with the Orders of this Court.

This Court is not free to reweigh the evidence or substitute

its judgment for that of the Secretary of Health and Human Services, *Bloodsworth v. Heckler*, 703 F.2d 1233, 1239 (11th Cir. 1983), which must be supported by substantial evidence. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). The substantial evidence test requires "that the decision under review be supported by evidence sufficient to justify a reasoning mind in accepting it; it is more than a scintilla, but less than a preponderance." *Brady v. Heckler*, 724 F.2d 914, 918 (11th Cir. 1984), quoting *Jones v. Schweiker*, 551 F.Supp. 205 (D. Md. 1982).

At the time of the most recent administrative hearing, Plaintiff was thirty-six years old, had completed a high school education (Tr. 309), and had previous work experience as a carpenter's helper, a dump truck driver, and a machine operator (Tr. 309-10). In claiming benefits, Plaintiff alleges disability due to sinus/nasal disorders, optic nerve atrophy and reduced vision, status-post surgeries on his sinuses, and borderline intellectual functioning (Doc. 13).

The Plaintiff filed a protective application for SSI on July 26, 2000 (Tr. 292-95). Benefits were awarded following a hearing by an Administrative Law Judge (ALJ) who determined that Ruffin was disabled as of March 31, 2000 (Tr. 22-32). Subsequently, however, the Social Security Administration determined that Plaintiff's condition had improved and that he was no longer disabled. A hearing was held by an ALJ, the same ALJ who had

previously awarded benefits, who determined that Ruffin's medical condition had improved, as of June 30, 2005, and that although he could no longer perform his past relevant work, there were light jobs in the national economy which he could perform (Tr. 10-20). Plaintiff requested review of the hearing decision (Tr. 9A-C) by the Appeals Council, but it was denied (Tr. 6-9).

Plaintiff claims that the opinion of the ALJ is not supported by substantial evidence. Specifically, Ruffin alleges that: (1) There has been no showing of medical improvement in his condition; and (2) the ALJ ignored certain evidence of record (Doc. 14). Defendant has responded to—and denies—these claims (Doc. 15). The medical evidence of record follows.

Plaintiff was admitted to the University of South Alabama Hospital on July 9, 1992 for a left frontal craniotomy to remove an intercranial mucocoele extension and orbital decompression and to undergo a polypectomy from the frontal ethmoid, sphenoid, and maxillary sinuses bilaterally; he was discharged on September 18, 1992 (Tr. 184-227).

The Court notes that there is little medical evidence following this two-month hospitalization. Specifically, the records, which span a period of nearly thirteen years, include various physical examinations and one hospitalization; all of these records were made at a time which either pre-date or occurred during Ruffin's period of disability (see Tr. 228-73).

While the Court does not wish to minimize the relevance of the evidence therein, the Court will not summarize it here as it is not particularly relevant to the issues here. The Court will, however, summarize the results of a psychological evaluation as Plaintiff has specifically raised a claim regarding it.¹

On April 1, 2002, Psychologist John R. Goff examined Ruffin and found him to have questionable memory, but adequate rapport (Tr. 260-66). Psychological testing, by way of the WAIS-III, revealed a Verbal IQ score of 78, a Performance IQ of 77, and a Full Scale IQ score of 76, placing him in the borderline range of intelligence; the subscale scores suggested that Ruffin's level of functioning may have declined. Scores from the WRAT-III placed Plaintiff at a fifth-grade level for word recognition, a seventh-grade level for spelling, and a sixth-grade level for arithmetic; his reading scores suggested marginal literacy, a level at which he had "quite likely" functioned throughout his life (Tr. 262). Goff's impression was that Ruffin was obsessed about his vision and, perhaps, terrified about losing the remainder of his vision: "One gets the impression that this is something of an obsessional worry about his physical situation and perhaps a morbid fear of blindness. This seems to have resulted in a general withdrawal from competitive employment from

¹The Court will set out this evidence even though this claim will not actually be discussed in light of the Court's decision with regard to Plaintiff's other claim.

other aspects of withdrawal" (Tr. 263). The Psychologist went on to state that Plaintiff "was able to understand, follow and carry out simple instructions;" he noted that Ruffin was mildly to moderately anxious (Tr. 264). Goff's conclusions were that Plaintiff suffered from Somatoform Disorder NOS and that he had some dependent personality characteristics. The Psychologist completed a medical source opinion in which he indicated that Ruffin would be extremely limited in his ability to respond appropriately to supervision, co-workers, customary work pressures, and customers or members of the general public; he would also be extremely limited in dealing with changes in a routine work setting (Tr. 265). Goff further indicated that Plaintiff would be markedly limited in maintaining attention, concentration or pace for periods of two hours or more and moderately limited in his ability to carry out simple instructions and in carrying out, remembering, or using judgment in detailed or complex instructions (*id.*). The Psychologist thought Ruffin would have an extreme degree of constriction of interests; he thought that these limitations had been at these levels of severity since 1994 (Tr. 266).

On June 3, 2005, an ENT examination was performed by Osasere L. Aghedo, an Osteopath, who noted that Plaintiff was in no distress (Tr. 122-25). Aghedo's impression was that Ruffin suffered from allergic rhino-sinusitis, nasal synachiae, inferior

turbinate hypertrophy, nasal obstruction, and torus palatinus; the doctor said that he reviewed the medical evidence of record in reaching these conclusions.

Medical records from Dr. Karen Manning show that she treated Plaintiff for allergic rhinitis and sinusitis, with resulting cough, on March 23, 2005 (Tr. 150-51). On June 23, the doctor found Plaintiff to have hypertension and obesity; she placed him on a 1200-calorie diet (Tr. 149). Manning noted, several weeks later, that although Ruffin had lost four-to-five pounds, his blood pressure was up, so she placed him on hypertension medication (Tr. 148).

On June 10, 2005, Ruffin underwent an examination by Ashley Williams, an Osteopath, who determined that Plaintiff's distance vision on the right was 20/20 while he could count fingers at his face on the left; near distance vision was 2/25 on the right while he could see hand motion on the left (Tr. 120-21). With glasses, Plaintiff had useful binocular vision both near and far, but only minimal depth perception. His condition was noted to be stable, progressive, and permanent; it was recommended that he avoid doing anything which required good vision.

At the evidentiary hearing before the ALJ, Ruffin testified that he had lost the vision in his left eye following sinus surgery and that he suffered from high blood pressure and sinus problems (Tr. 308-12, 317-18). He stated that headaches,

dizziness, sinus congestion, and loss of vision keep him from working. Ruffin stated that his condition had deteriorated since he was found to be disabled; specifically, his right vision had weakened and his sinuses were worse. Dizziness from headaches required Ruffin to lie down three-to-four hours daily; he rated his head pain as eight on a ten-point scale.

Dr. James W. Anderson, testifying as a medical expert (hereinafter *ME*), stated that Plaintiff suffered from "chronic allergic sinusitis and rhinitis with a headache disorder. He is obese. He has hypertension. New, new onset hypertension and he has loss of effective vision in his left eye . . . with normal vision in his right eye which is stable" (Tr. 313; *see generally* Tr. 313-18). Anderson went on to say that Plaintiff's condition is now stable: "He's had minimal treatment for his allergic sinusitis and rhinitis and receives no visual treatment. It's my impression, that medical improvement has been demonstrated" (Tr. 313). The ME went on to state his opinion that Ruffin was capable of performing a full range of light work that did not require binocular vision and that he had been able to perform this work since June 2005. Upon questioning by Plaintiff's attorney, Anderson stated that his conclusions were based on the fact that there had been no recent medical treatment for Ruffin's various conditions; he stated that his conclusions were presumptions as there was no actual medical evidence of

improvement (Tr. 315-16).

Patrick Sweeney, testifying as a Vocational Expert (hereinafter *VE*), stated that he had reviewed the evidence of record and that Ruffin would not be able to perform his past relevant work under any of the evaluations completed by either the examining or non-examining physicians (Tr. 316-17, 318-25). The *VE* went on to state that Plaintiff would not be able to perform any work under the limitations asserted by Psychologist Goff, but that under the limitations found by one of the non-examining physicians (see Tr. 140-47) Ruffin would be able to perform specified jobs in the light range classification. The *VE* stated that the testimony of Dr. Anderson indicated that Ruffin had the ability to perform light work while Plaintiff's own testimony would preclude all work. This concludes all of the evidence of record.

In his decision, the ALJ determined that although Ruffin could no longer perform his past relevant work, there were jobs classified as light-exertion which he could perform (Tr. 10-20). In reaching this decision, the ALJ determined that Plaintiff was not a credible witness with regard to the "intensity, persistence and limiting effects" of his symptoms (Tr. 18); Ruffin has not challenged this finding in bringing this action. The ALJ went on to give substantial weight to the ME's opinions in reaching his own conclusions (Tr. 19).

In bringing this action, Plaintiff's first claim is that there has been no showing of medical improvement in his condition (Doc. 14, pp. 6-8). In discussing how to examine a medical improvement case, the Eleventh Circuit Court of Appeals has held that "there can be no termination of benefits unless there is substantial evidence of improvement to the point of no disability." *McAulay v. Heckler*, 749 F.2d 1500 (11th Cir. 1985) (citing *Simpson v. Schweiker*, 691 F.2d 966, 969 (11th Cir. 1982)). The Appellate Court has further held that "a comparison of the original medical evidence and the new medical evidence is necessary to make a finding of improvement." *McAulay*, 749 F.2d at 1500 (citing *Vaughn v. Heckler*, 727 F.2d 1040, 1043 (11th Cir. 1984)). See also 20 C.F.R. § 416.994(b)(C)(vii) (2007).²

The Court finds that the ALJ's opinion is not supported by substantial evidence. The ALJ gave great weight to ME Anderson's opinion that there had been medical improvement although the doctor specifically stated that his conclusions were presumptive

²"For purpose of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time. If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (*i.e.*, your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final."

as there was no actual evidence of improvement (see Tr. 314-16). Specifically, the questions by Plaintiff's attorney and the ME's responses were as follows:

Q Okay. So all the severe impairments that the Judge found in 2002, there's no evidence in the record that he's improved, correct?

A That's true.

Q You've just presumed that.

A I have.

(Tr. 315-16). Anderson's testimony—and the ALJ's reliance thereon—is misplaced in light of the clear language of *McAulay* that "there can be no termination of benefits unless there is substantial evidence of improvement to the point of no disability." *McAulay*, 749 F.2d 1500. Defendant's argument that Ruffin's sustained lack of medical treatment meets this burden (Doc. 15, p. 8) is incorrect; the Court does not understand *McAulay* to countenance the shifting of the burden to make Plaintiff prove that he is still disabled. That is precisely what has happened here.

Based on review of the entire record, the Court finds that the Commissioner's decision is not supported by substantial evidence. Therefore, it is **ORDERED** that the action be **REVERSED** and **REMANDED** to the Social Security Administration for further administrative proceedings consistent with this opinion, to

include the payment—and back-payment—of SSI benefits to Ruffin until such time the Social Security Administration can demonstrate “substantial evidence of improvement to the point of no disability.” Judgment will be entered by separate Order.

DONE this 25th day of June, 2008.

s/BERT W. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE